

**United States Department of Labor
Employees' Compensation Appeals Board**

H.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Jose, CA, Employer**

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**Docket No. 11-2047
Issued: May 23, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 13, 2011 appellant filed a timely appeal from the August 23, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has established that he sustained a knee injury in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant has submitted new evidence with his appeal. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

FACTUAL HISTORY

On July 12, 2011 appellant, then a 55-year-old mail handler/pit operator, filed an occupational disease claim attributing his meniscus tear and knee contusion to his employment. He stated that his knee became so swollen that he could not walk and it would not bend for him to use the forklift. Appellant noted that he first became aware of the conditions and their relationship to his employment on June 29, 2011.

In support of his claim, appellant submitted several medical reports. The July 12, 2011 duty status report³ (Form CA-17) provided work restrictions and diagnoses of left knee contusion and meniscal tear and noted the cause of the injury as jumping up and down from a forklift. The June 29, 2011 discharge instructions from Dr. Steve Scherr, an attending Board-certified physician at the Department of Veterans Affairs, VA Palo Alto HCS, diagnosed a mild left knee contusion in the June 29, 2011 discharge instructions.

By letter dated July 21, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim and advised him as to the type of medical and factual evidence to submit. Appellant was given 30 days to submit the requested information to OWCP. No evidence was submitted.

By decision dated August 23, 2011, OWCP denied appellant's claim on the grounds that fact of injury had not been established. Specifically, it found that the event, incident or accident did not occur as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.⁷ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: a detailed description of the employment factors or conditions,

³ The physician's signature on the form is illegible.

⁴ *Supra* note 1.

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ 20 C.F.R. § 10.5(ee).

which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. If a claimant does establish an employment factor, he must submit medical evidence showing that a medical condition was caused by such a factor.⁸ The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence from a physician. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

The Board finds that appellant has failed to establish that he sustained a knee injury in the performance of duty. Appellant claimed that he sustained a left knee contusion and meniscal tear due to his employment.

The Board notes that appellant did not submit a detailed factual statement regarding the work factors alleged to have caused his left knee injury. Appellant referred to his left knee becoming so swollen that he could not get up on the forklift or walk. No statement or information was provided by him detailing the employment activities he believed contributed to or caused his left knee condition.

As noted, to meet his burden of proof appellant must also submit rationalized medical evidence. The only medical evidence submitted by him consist of a July 12, 2011 CA-17 form diagnosing left knee contusion and meniscal tear and June 29, 2011 discharge instructions from Dr. Scherr, an attending Board-certified physician, diagnosing a mild left knee contusion. A rationalized medical opinion is one based on an accurate factual and medical background and supported by rationale explaining causal relationship between a diagnosed condition and the identified employment factors. Neither the CA-17 form nor the discharge instructions provide any explanation of how the left knee contusion and meniscal tear were caused by or contributed to appellant's employment duties. The Board finds that he did not submit sufficient factual or medical evidence to meet his burden of proof.¹⁰

Appellant may submit any new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that he sustained a left knee condition in the performance of duty.

⁸ *C.D.*, Docket No. 09-1881 (issued April 20, 2010); *Effie Morris*, 44 ECAB 470 (1993).

⁹ *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000).

¹⁰ *See Roy L. Humphrey*, 57 ECAB 238 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 23, 2011 is affirmed.

Issued: May 23, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board